IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1358 OF 1998

1. Suresh V. Muzumdar of Bombay, Indian Inhabitant, residing at, “Roxana” Maharshi Karve Road, Mumbai – 400 020.
2. Keshav S. Phansalkar of Bombay, Indian Inhabitant, residing at, A-3, Beach House Park, Juhu, Bombay – 400 049. ... Petitioners

Versus

1. State of Maharashtra
2. Smt. Neela S. Talpade of Bombay, Indian Inhabitant, residing at, `Jonette', 554, Jam-e-Jamshed Road, Mumbai – 400 020.
3. Kanu G. Dhurandhar, of Bombay, Indian Inhabitant residing at, `Ameya', 346-B, Linking Road, Khar, Mumbai – 400 052. ... Respondents

Mr. S.V. Marwadi i/b M/s. Kanga & Co. for the petitioners.

Mr. D.S. Jadhav i/b M/s. Narulla & Associates for respondent 2.

Ms. M.H. Mhatre, A.P.P. for the State.

CORAM : SMT. RANJANA DESAI, J.

DATE ON WHICH THE JUDGMENT RESERVED : 22ND DECEMBER, 2006.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 9TH JANUARY, 2007.

JUDGMENT:-

1. In this writ petition filed under Article 227 of the Constitution of India and under Section 482 of the Criminal Procedure Code (for short, "the Cr.P.C."), the petitioners have challenged the order passed by the learned Additional Chief Metropolitan Magistrate, 9th Court at Bandra on 25/8/1998 issuing process against the petitioners under section 409 read with section 34 of the Indian Penal Code (for short, "the IPC") and under section 511 read with section 34 of the IPC, on the complaint filed by respondent 2.

2. It is necessary to narrate the facts of the case to understand the nature of allegations levelled by respondent 2 against the petitioners. The petitioners claim that they had close family relations and friendship with late Dr. G.M. Dhurandhar. Respondents 2 and 3 are the daughter and son respectively of the said Dr. Dhurandhar. The said Dr. Dhurandhar (for convenience, "the deceased") died in Bombay on 17/2/1989 leaving behind him, a Will dated 23/12/1984 (for convenience, "the said Will") and Codicil dated 1/5/1986 (for convenience, "the said Codicil"). The deceased had appointed the petitioners as Executors of the said Will.

3. In 1989, the petitioners filed a petition bearing No.523 of 1989 in the Testamentary Jurisdiction of this court seeking probate of the said Will and the said Codicil, being the Executors of the said Will. The deceased was entitled to an immoveable property called "Amba Sadan" situated at Linking

Road, Khar. The deceased was also the owner of Flat No.5 at Jonette, 554, Jam-e-Jamshed Road, Matunga, (for convenience, “the Jonette flat”). According to the petitioners, under the said Will and the said Codicil, the deceased bequeathed Amba Sadan property to respondent 3 and the Jonette flat along with furnitures, fixtures and fittings was directed to be sold and the sale proceeds were directed to be equally divided between respondents 2 and 3. The deceased bequeathed the rest and residue of his estate to respondents 2 and 3 in equal shares, absolutely.

4. According to the petitioners, after filing of the petition for probate, they called upon respondent 2 to hand over vacant possession of the said Jonette flat to enable them to sell it. On respondent 2's refusal to do so, Notice of Motion No.2568 of 1989 was taken out by the petitioners for possession of the Jonette flat and other reliefs. In that notice of motion, there were negotiations for settlement. Ultimately, consent terms were arrived at on or about 23/1/1990 (for convenience, “the said consent terms”) whereby the parties accepted that respondent 3 was entitled to Amba Sadan property and respondent 2 was entitled to the Jonette flat. Pursuant to the said consent terms, the Jonette flat was immediately handed over to respondent 2 with all furnitures and fixtures and the petitioners started taking steps to realise the estate, which consisted of several fixed deposit receipts, shares, units and bank accounts. Clause 1(f) of the said consent terms is of great significance and, hence, must be quoted. It reads thus :

> *"Clause (f) : Petitioners to encash the F.D. Receipts which have matured and to pay therefrom the Income and Wealth Tax liabilities for the year 31.3.1989 and other outgoings."*

5. According to the petitioners, by letter dated 7/2/1991 addressed by the petitioners' advocates to the solicitors of respondent 2, the petitioners conveyed to respondent 2 that the estate will have to be realised and all outgoings will have to be paid. A list containing FDRs which had not matured, liabilities (including payment of income-tax as on 31/3/1990 amounting to Rs.4,000/- and interest and wealth-tax for the year ending 31/3/1990 amounting to Rs.76,280/- plus interest) and a list of shares and debentures were forwarded to respondent 2. It is the case of the petitioners that on 8/2/1991, a meeting was held in the office of their advocates. In that meeting, respondent 2, her husband and their former advocate were present. It was agreed that the outstanding liabilities towards income-tax and wealth-tax for the year ending 31/3/1990 would be paid. According to the petitioners, respondent 2 by her personal letter dated 9/2/1991 acknowledged the receipt of letter dated 7/2/1991 and forwarded a cheque of Rs.30,000/- in favour of the petitioners as requested. The petitioners accordingly made the said payment towards outstanding liabilities of wealth tax on 23/2/1991. In short, the petitioners' case is that on the implementation of the said consent terms and agreement contained in the said letters dated 7/2/1991 and 8/2/1991, the petitioners have paid all wealth-tax and income-tax liabilities for the year ending 31/3/1990. The petitioners' case is that they have taken all actions as

Executors of the said Will of the deceased with full knowledge and consent of respondent 2 and her then advocates. The petitioners contend that they have acted bona fide and in good faith.

6. According to the petitioners, in spite of this, respondent 2 filed Misc. Petition No.27 of 1996 in this court in its Testamentary and Intestate Jurisdiction, inter alia, for removal of the petitioners as the Executors of the said Will and the said Codicil under section 301 of the Indian Succession Act. In the said petition, following allegations were made.

i) that the respondents 1 and 2 acted in violation of clause F of the consent terms and wrongfully and negligently caused loss to the estate by paying wealth tax of Rs.1,30,365/- in respect of Amba Sadan property for the assessment years 1989-90 and 1990-91.

ii) Respondents 1 and 2 tried to extract a sum of Rs.8959 for reimbursing respondent No.3 towards the medical expenses of the deceased, which were in fact already paid from the joint account of the petitioner and the deceased.

iii) Respondents 1 and 2 unnecessarily indulged in expensive litigation by filing appeal no.46 of 1995.

iv) Respondents 1 and 2 handed over 600 TISCO shares to Respondent No.3 in 1992 when the estate was not even wound up, and then refused to hand over 1220 TISCO shares to the Petitioner."

7. The petitioners filed an affidavit in reply. The said petition was disposed of by Justice J.A. Patil by judgment and order dated 21/1/1998 (for

convenience, “the said judgment”). The learned judge declined to pass orders under section 301 of the Indian Succession Act to remove the petitioners as Executors. However, in respect of payment of wealth-tax and reimbursement of medical expenses of the deceased to respondent 3, Justice Patil made certain observations against the petitioners. I shall advert to the said judgment at the appropriate time.

8. Respondent 2 also filed a civil suit being Suit (Lodging) No.2221 of 1998, inter alia, for recovery of the sum of Rs.1,87,496.38 alleged to be payable to her on account of the estate of the deceased.

9. On 9/7/1998, respondent 2 filed Complaint No.587 of 1998 (for convenience, “the said complaint”) in the Court of the Additional Chief Metropolitan Magistrate, 9th Court at Bandra, against the petitioners, who are arraigned as accused 1 and 2 respectively and respondent 3 who is arraigned as accused 3. In the said complaint, respondent 2, inter alia, alleged that the petitioners had willfully and dishonestly paid the wealth-tax for the Assessment Year 1990-91 in respect of Amba Sadan property in collusion with respondent 3 in order to cause wrongful gain to accused 3 and wrongful loss to her and to the estate of the deceased. Respondent 2 alleged that the petitioners had committed criminal breach of trust in respect of Rs.82,963/- by wrongfully paying the same from the estate of the deceased by way of wealth-tax for the Assessment Year 1990-91 in respect of Amba Sadan property. Respondent 2 has also alleged that the petitioners have also committed

criminal breach of trust in respect of Rs.47,402/- by wrongfully paying the same from the estate of the deceased by way of wealth-tax for Assessment Year 1989-90 in respect of payment of joint owner of Amba Sadan property - one Ms. Ambika Dhurandhar. Respondent 2 has also alleged that in violation of the said consent terms, the petitioners tried to extract a sum of Rs.8,959/- from the estate of the deceased in order to reimburse respondent 3 towards the medical expenses of the deceased which, in fact, were already paid from the joint account held by respondent 3 and the deceased. Respondent 2 has also alleged that the petitioners unnecessarily filed frivolous and expensive litigation in this court.

10. The learned Magistrate issued process against the petitioners under section 409 read with section 34 of the IPC and under section 511 read with section 34 of the IPC against the petitioners. The petitioners have prayed for quashing of the said complaint and the process issued on it.

11. I have heard Mr. Marwadi, the learned counsel appearing for the petitioners and Mr. Jadhav, the learned counsel appearing for respondent 2. I have also perused the written submissions tendered in the court by them.

12. Mr. Marwadi drew my attention to the judgment of the Supreme Court in ***M/s. Indian Oil Corporation v. M/s. NEPC India Ltd. & Ors., AIR 2006 SC 278***, where the Supreme Court has reiterated the principles relating to

exercise of jurisdiction under section 482 of the Code to quash complaints and criminal proceedings. Mr. Marwadi contended that if the said complaint is examined in the light of the principles set out by the Supreme Court in this judgment it will have to be quashed. Mr. Marwadi submitted that if the allegations made in the said complaint are taken at their face value, they do not prima facie constitute any offence against the petitioners. He submitted that the said complaint is initiated with mala fides for wreaking vengeance. It is clearly an abuse of the process of law and must therefore be quashed.

13. Mr. Marwadi submitted that it is true that though the medical expenses of the deceased were paid from the joint account of respondent 2 and the deceased, the petitioners demanded a sum of Rs.8,959/- from respondent 2 by letter dated 24/9/1991. But a mere demand of this nature does not constitute an offence under sections 409 and 511 of the IPC. Similarly filing of cases on legal advice would never attract any penal provisions of the IPC. In this connection, Mr. Marwadi drew support from the said judgment.

14. Mr. Marwadi then contended that so far as the alleged violation of clause 1(f) of the said consent terms is concerned, payment of Rs.82,963/- towards wealth-tax for the Assessment Year 1990-91 was made openly and to the knowledge of respondent 2. In this connection, he drew my attention to the letter dated 7/2/1991 addressed to respondent 2's solicitors by the petitioners' solicitors containing a request made to respondent 2 to send a cheque in the sum of Rs.30,000/- so that income-tax and wealth-tax can be

paid for the period ending 31/3/1990. There is also a reference to the meeting, which was proposed to be held between the petitioners and respondent 2 on 8/2/1991. Mr. Marwadi submitted that in fact a meeting was held on 8/2/1991. Thereafter, a letter dated 9/2/1991 was written by the petitioners' solicitors to the solicitors of respondent 2. In that letter, there is a reference to the meeting held on 8/2/1991. Respondent 2 was informed through this letter that outstanding liability towards wealth-tax and income-tax and penalty for the year ending 31/3/1990 is Rs.92,754/-. Mr. Marwadi pointed out that respondent 2 sent letter dated 9/2/1991 to the petitioners' solicitors referring to the meeting held in their office on 8/2/1991. In this letter, respondent 2 has stated that as per the request made in that meeting, she was forwarding a cheque of Rs.30,000/- from the joint account in Bank of India in favour of the Executors. Mr. Marwadi contended that therefore, the wealth-tax was paid with the consent and knowledge of respondent 2. He submitted that the above-mentioned letters were suppressed from the learned Magistrate. He submitted that if these letters were shown to the learned Magistrate, he would not have issued process. In this connection, Mr. Marwadi drew my attention to the judgment of this court in ***Bomanji Kavasji Boman Behram & Ors. v. Mehernosh Minochar Mehta & Ors., 1980 Bom.C.R. 503***, where this court was dealing with a petition filed under section 482 of the Cr.P.C. praying for quashing of the process issued against the petitioners therein under sections 13 and 14 of the Maharashtra Ownership Flats (Regulation of Promotion of Construction, Sale, Management and

Transfer) Act, 1963. This court quashed the process, inter alia, holding that if the vital letter containing fair and reasonable response by the Trustees had been disclosed to the Magistrate, he would have dismissed the complaint.

15. So far as the allegation that the amount of wealth-tax and interest paid towards Amba Sadan for the Assessment Year 1989-90 works out to be Rs.94,804/- and since Amba Sadan was a joint property of respondent 3 and Ms. Ambika Dhurandhar, the petitioners have fraudulently paid Rs.47,402/- from the estate of the deceased which amount was payable by the said Ms. Ambika Dhurandhar is concerned, Mr. Marwadi contended that this allegation has been dealt with by Justice Patil and Justice Patil has held that admittedly the wealth-tax of Rs.1,00,698/- was paid for the Assessment Year 1989-90 and that is in accordance with clause 1(f) of the consent terms and, therefore, it is futile for respondent 2 to make any grievance in respect of the wealth-tax so far as the Assessment Year 1989-90 is concerned. Mr. Marwadi submitted that therefore this allegation should not have weighed with the learned Magistrate while issuing the process.

16. Mr. Marwadi urged that adverse observations of Justice Patil in civil proceedings would not give rise to a criminal action against the petitioners. Mr. Marwadi pointed out that an appeal was carried from the said judgment being Appeal No.389 of 1999. That appeal was disposed of by consent of the parties by clarifying that the observations made in the said judgment would have no effect whatsoever on the substantive proceedings i.e. suit, etc. filed

by the parties in respect of the payments made by the Executors i.e. the petitioners towards taxes from the estate of the deceased. Mr. Marwadi contended that therefore process could not have been issued on the basis of the observations made in the said judgment.

17. Mr. Marwadi submitted that petitioner 1 is 78 years old, petitioner 2 is 75 years old and accused 3 is 71 years old. He submitted that therefore the process deserves to be quashed on this ground also. In this connection, Mr. Marwadi relied on the judgment of the Supreme Court in ***Seeta Hemchandra Shashittal & Anr. v. State of Maharashtra & Ors., AIR 2001 SC 1246***.

18. Lastly, Mr. Marwadi submitted that Suit No.888 of 1997 has been filed by the petitioners against respondent 2. The point involved in this suit is with regard to the liability to pay the tax. He submitted that therefore in any event, pending the hearing and final disposal of that suit, the instant criminal proceedings deserve to be stayed.

19. Mr. Jadhav, the learned counsel for respondent 2 on the other hand submitted that no case is made out for quashing the complaint. He submitted that the petitioners are guilty of flagrant violation of clause 1(f) of the said consent terms. He submitted that by paying wealth-tax of Rs.82,963/- for the Assessment Year 1990-91 from the estate of the deceased, when as per clause 1(f) of the consent terms, the wealth-tax was to be paid from the estate

of the deceased for the year ending 31/3/1989, the petitioners have caused wrongful loss to respondent 2. They have colluded with respondent 3 with a view to ensuring that respondent 3 makes wrongful gain to the detriment of respondent 2. He submitted that the said judgment highlights the acts of omission and commission of the petitioners. He submitted that reliance placed by respondent 2 on the judgment of this court in ***Bomanji Kavasji Boman Behram's case (supra)*** is totally misplaced because in this case, respondent 2 is not guilty of any suppression of facts. He submitted that in the complaint, reliance is placed on the said judgment in which the correspondence on which the petitioners are relying is discussed. Therefore, there is no suppression as alleged or otherwise. Mr. Jadhav contended that the complaint makes out a prima facie case against the petitioners and such a complaint cannot be quashed.

20. Before I deal with the rival contentions, it is necessary to note the principles relating to exercise of jurisdiction under section 482 of the Cr.P.C. laid down by the Supreme Court in ***M/s. Indian Oil Corporation's case (supra)***. They are as under:

> "(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.
>
> For this purpose, the complaint has to be examined as a whole, but without examining the merits of the

allegations.

Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

21. The present case will have to be examined in the light of the above

principles. The primary question which needs to be considered is whether if the allegations made in the complaint are taken at their face value, they prima facie disclose any offence or not. In this connection, it is necessary to refer to Misc. Petition No.27 of 1996, which was filed by respondent 2 praying that the petitioners be removed as the Executors of the estate of the deceased. The removal was sought on four grounds, which I have quoted in paragraph 6 herein-above. The said complaint is based on three out of those four grounds. They are as under :

> i) that the respondents 1 and 2 acted in violation of clause f of the consent terms and wrongfully and negligently caused loss to the estate by paying wealth tax of Rs.1,30,365/- in respect of Amba Sadan property for the assessment years 1989-90 and 1990-91.
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> ii) Respondents 1 and 2 tried to extract a sum of Rs.8959 for reimbursing respondent No.3 towards the medical expenses of the deceased, which were in fact already paid from the joint account of the petitioner and the deceased.
>
> iii) Respondents 1 and 2 unnecessarily indulged in expensive litigation by filing appeal no.46 of 1995."

22. The said petition was resisted by the petitioners by filing a reply. After considering the rival submissions, Justice J.A. Patil by the said judgment disposed of the said petition.

23. So far as ground (i) quoted in the preceding paragraph is concerned, it pertains to wealth-tax liability for 1989-90 and 1990-91. It was the contention

of respondent 2 that in violation of clause 1(f) of the said consent terms, the petitioners in conspiracy with respondent 3 paid a sum of Rs.82,963/- as wealth-tax for the Assessment Year 1990-91 on 22/3/1991 in respect of Amba Sadan property from the estate of the deceased. While dealing with this, Justice Patil observed that the petitioners had full knowledge that the wealth-tax for the Assessment Year 1990-91 had to be paid exclusively by respondent 3 from his own pocket. They knew that as per clause 1(f) of the said consent terms, income-tax and wealth-tax liabilities had to be paid by the petitioners from the estate of the deceased only for the year ending 31/3/1989 for the Assessment Year 1989-90 and wealth-tax for Assessment Year 1990-91 had to be paid by respondent 3 since Amba Sadan property was exclusively given to him. Justice Patil observed that the petitioners were, therefore, not justified in conducting the estate of the deceased towards payment of wealth-tax for the Assessment Year 1990-91.

24. So far as wealth-tax liability for the period 1989-90 is concerned, according to respondent 2, Amba Sadan property stood in the joint names of the deceased and Ms. Ambika Dhurandhar. This property was wrongly shown as the sole property of the deceased. The petitioners fraudulently paid wealth-tax and interest towards Amba Sadan property for the Assessment Year 1989-90 to the tune of Rs.1,00,698/- showing it as the sole property of the deceased. According to respondent 2, the amount of wealth-tax and interest paid towards Amba Sadan property for the Assessment Year 1989-90 works out to be Rs.94,804/- and since this was a joint property of respondent

3 and Ms. Ambika Dhurandhar, the petitioners have fraudulently paid Rs.47,402/- from the estate of the deceased when this amount was payable by Ms. Ambika Dhurandhar.

25. While dealing with this contention, Justice Patil held that the question whether the deceased was the full owner or the joint owner of Amba Sadan property need not be decided by him in his testamentary jurisdiction. Justice Patil observed that the disputed question about the title of the deceased cannot be gone into in exercise of testamentary jurisdiction. Justice Patil observed that the said consent terms to which respondent 2 is a party clearly state that Amba Sadan property is absolutely given to respondent 3 and it is not proper on the part of respondent 2 to raise any question about the title of Amba Sadan property particularly when she has been absolutely given the Jonette flat though under the said Will, she was entitled to only ½ share therein. Justice Patil further observed that the question whether the deceased was the full owner of Amba Sadan property and whether respondent 3 has a right to hold the same absolutely is a matter between respondent 3 and Ms. Ambika Dhurandhar. He further observed that admittedly, the wealth-tax of Rs.1,00,698/- in respect of Amba Sadan property was paid for the Assessment Year 1989-90. The said payment is in accordance with clause 1 (f) of the said consent terms and it is, therefore, futile for respondent 2 to make any grievance in respect of the payment of wealth-tax so far as Assessment Year 1989-90 is concerned.

26. Thus, out of the three allegations levelled against the petitioners on which the said complaint is based, the allegation regarding filing of expensive litigation was rejected by Justice Patil as the litigation was filed on legal advise. So far as the demand for money towards the medical expenses of the deceased is concerned, though Justice Patil has passed caustic remarks about the conduct of the petitioners and observed that they were not justified in making the demands and that they had joined hands with respondent 3, in my opinion, in the facts of this case, mere demand of money would not attract any provisions of the IPC as alleged. The petitioners, therefore, cannot be subjected to trial as regards the said demand.

27. As regards the allegation that the petitioners have acted in violation of clause 1(f) of the said consent terms, as I have already noted herein-above, Justice Patil has found that so far as payment of wealth-tax of Rs.1,00,698/- for the Assessment Year 1989-90 in respect of Amba Sadan property is concerned, it is in accordance with clause 1(f) of the said consent terms. Respondent 2's grievance in that behalf has been dismissed as futile. The petitioners, therefore, cannot be tried for this allegation also.

28. However, so far as the allegation that in violation of clause 1(f), the petitioners have in conspiracy with respondent 3 paid a sum of Rs.82,963/- as wealth-tax for the Assessment Year 1990-91 in respect of Amba Sadan property from the estate of the deceased is concerned, Justice Patil has come down heavily on the petitioners and observed that the petitioners had full

knowledge that as per clause 1(f) of the said consent terms, it was the liability of respondent 3 to pay the said amount as Amba Sadan property was exclusively given to him and the petitioners were not justified in conducting the estate of the deceased towards payment of wealth-tax for the Assessment Year 1990-91. These observations of Justice Patil are significant. Prima facie, these observations make out an offence against the petitioners.

29. Relying on certain letters to which I have made a reference herein-above, it was argued that the payment of wealth-tax for the Assessment Year 1989-90 was made with full knowledge and consent of respondent 2 and, therefore, no offence can be said to have been committed by the petitioners. It is pertinent to note that the relevant correspondence was shown to Justice Patil. Meeting held between the parties has also been referred to by Justice Patil. It was argued before him that respondent 2 had consented to the payment of wealth-tax. Justice Patil has referred to letter dated 30/3/1990 addressed by respondent 2's solicitors to the petitioners' solicitors in which respondent 2 has denied having given her consent to the payment of wealth-tax in respect of Amba Sadan property and had demanded certain documents to verify the nature of bills and liabilities. Justice Patil has observed that the petitioners had avoided to give copies of the relevant documents. It is difficult, at this stage, to assess the value of these letters and decide whether respondent 2 had consented to the payment of wealth-tax for the Assessment Year 1990-91. For that evidence will have to be adduced. In the absence of evidence, at this stage, it cannot be concluded that the petitioners have

committed no offence because respondent 2 had consented to the payment of wealth-tax.

30. It was also argued that an appeal was filed challenging the said judgment and that appeal was disposed of by consent of the parties. It was pointed out that the Division Bench of this court in its order dated 25/6/1999 clarified that the observations made in the said judgment would have no effect whatsoever on the substantive proceedings i.e. suit, etc. filed by the parties in respect of the payments made by the Executors towards taxes from the estate of the deceased. Mr. Marwadi contended that in view of these observations made by the Division Bench, on the basis of the adverse observations made in the said judgment, criminal proceedings cannot be initiated against the petitioners. I am not impressed by this submission. It is pertinent to note that the Division Bench has not quashed and set aside the said judgment. The Division Bench has only said that those observations would have no effect on substantive proceedings i.e. suits, etc. filed by the parties in respect of payment made by the Executors towards taxes from the estate of the deceased and the said suits will be decided on their own merits without being influenced by the observations made in the said judgment. The Division Bench further noted that these clarifications would also apply to the suits filed by the Executors. Therefore, the observations of the Division Bench were intended to cover only the suits filed by the petitioners and respondent 2. It cannot cover the criminal proceedings. This submission of Mr. Marwadi must, therefore, be rejected.

31. It was also argued by Mr. Marwadi on the basis of the judgment of the Supreme Court in ***Seeta Hemchandra Shashittal' scase (supra)*** that the criminal proceedings be quashed considering the advanced age of the petitioners. In my opinion, the judgment of the Supreme Court in ***Seeta Hemchandra Shashittal' scase (supra)*** is not applicable to the present case because in that case, the Supreme Court was convinced that the materials before it were insufficient to prove that the accused who were two old ladies intentionally abated the public servants in acquiring assets. It was observed that if that is the position, the two old ladies should not be compelled to embark upon the trial which in all probabilities cannot end in conviction against them. It is against the backdrop of these facts that the Supreme Court observed that the two old ladies should not be made to stand the trial. Such is not the case here. In this case, it cannot be said that no offence at all is made out against the petitioners. Therefore, the said complaint cannot be quashed merely on the basis of the advanced age of the petitioners.

32. Mr. Marwadi also contended that in any event, in view of the pendency of Suit No.888 of 1997, the present criminal proceedings may be stayed because the same points are involved in the suit. I have perused the plaint in Suit No.888 of 1997. The said suit is filed by the petitioners against respondent 2 for sum of Rs.44,925/- along with interest thereon. It is, inter alia, the case of the petitioners in that suit that respondent 2 is bound and

liable to pay to the petitioners the said sum for the purposes of administration of the estate of the deceased by the petitioners. The issues involved in the said suit are different from the issues involved in the said complaint. Therefore, in my opinion, it is not necessary to stay the said complaint till the said suit is finally heard and disposed of. Besides, assuming that the civil suit involves same issues as stated by the Supreme Court in ***Indian Oil Corporation's case (supra)***, if the complaint discloses criminal offence, it cannot be quashed merely because a civil remedy is availed of by the party. On the same analogy it is not necessary to stay the criminal proceedings.

33. In my opinion, if the said complaint is examined in the light of the principles enunciated by the Supreme Court in ***Indian Oil Corporation's case (supra)***, it cannot be quashed in its entirety. As regards payment of wealth-tax for the Assessment Year 1990-91 in respect of Amba Sadan property from the estate of the deceased, the said complaint must proceed, because prima facie case is made out as regards these allegations. There is no indication that the criminal proceedings are initiated with malafides for wreaking vengeance or to cause harm to the petitioners. It cannot be said that the above allegation is absurd or inherently improbable. However, so far as the rest of the allegations are concerned, they cannot be sustained and the process issued on these allegations must be quashed.

34. In view of the above, the petition will have to be partly allowed. The

process issued on the complaint being Criminal Complaint No.587/Misc./98 of 1998 pending on the file of the Additional Metropolitan Magistrate, IXth Court, Bandra, Mumbai is quashed so far as it relates to the allegation regarding demand for money made by the petitioners towards reimbursement of medical expenses of the deceased; so far as it relates to the allegation that the petitioners filed expensive litigation against respondent 2 and so far as it relates to the allegation regarding the payment of wealth-tax and interest towards Amba Sadan property for Assessment Year 1989-90 to the tune of Rs.1,00,698/-. The complaint shall, however, proceed so far as it relates to the allegation that the petitioners have in conspiracy with respondent 3 paid a sum of Rs.82,963/- as wealth-tax for the Assessment Year 1990-91 on 23/2/1991 in respect of Amba Sadan property from the estate of the deceased. The process issued in that behalf is not quashed. Ad-interim stay order passed by this court is vacated to the above extent. The trial court be intimated accordingly. It is clarified that I have not expressed any final opinion on the merits of the case and the trial court shall deal with the case independently and in accordance with law. The petition is disposed of in the aforestated terms.

[SMT. RANJANA DESAI, J.]